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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/577,444	04/27/2006	Jean-Philippe Houlmont	3493-0165PUS1	3437

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EXAMINER	
OLSON, ERIC	
ART UNIT	PAPER NUMBER
1623	

NOTIFICATION DATE	DELIVERY MODE
03/13/2009	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mailroom@bskb.com

Office Action Summary	Application No.	Applicant(s)	
	10/577,444	HOULMONT ET AL.	
	Examiner	Art Unit	
	ERIC S. OLSON	1623	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *05 January 2009*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *18-21 and 23-41* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *18-21 and 23-41* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☒ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

Detailed Action

This office action is a response to applicant's communication submitted January 5, 2009 wherein claims 18, 21, 27, 31, and 35 are amended and new claim 41 is introduced. This application is a national stage application of PCT/FR04/02794, filed October 29, 2004, which claims priority to foreign application FR0312798, filed October 31, 2003.

Claims 18-21 and 23-41 are pending in this application.

Claims 18-21 and 23-41 as amended are examined on the merits herein.

Applicant's amendment, submitted January 5, 2009, with respect to the rejection of instant claims 18-21 and 23-30 under 35 USC 112, first paragraph, for lacking enablement for a method of preventing inflammatory diseases, has been fully considered and found to be persuasive to remove the rejection as the claims no longer recite preventative methods. Therefore the rejection is withdrawn.

Applicant's amendment, submitted January 5, 2009, with respect to the rejection of instant claims 18-21, 23-26, and 30 under 35 USC 102(b) for being anticipated by Houlmant et al., has been fully considered and found to be persuasive to remove the rejection as the claims have been amended to require that the patient be in need of treatment of an inflammatory disease as opposed to prevention. Therefore the rejection is withdrawn as it applies to these claims. Note that the rejection stands for claims 35, 36, 39, and 40.

The following rejections of record in the previous office action are maintained:

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 35, 36, 39, and 40 are rejected under 35 U.S.C. 102(b) as being anticipated by Houlmont et al. (Reference included with PTO-1449)

Houlmont et al. discloses pentyl and cetyl rhamnosides. (p. 364 figure 1, right column first and second paragraphs) Microemulsions were prepared with 5% of either of these compounds as cosurfactants which are especially biocompatible and nontoxic. (p. 365 right column paragraphs 3-5, p. 366 tables IV and V) These compositions can be used in cosmetic products with enhanced tolerability. (p. 366, right column paragraphs 5-10) Applying these cosmetic products to the skin inherently exerts the effects claimed in instant claims 35, 36, 39, and 40, namely slowing the aging of the skin to which it is applied.

Therefore Houlmont et al. anticipates the claimed invention.

Response to Argument: Applicant's arguments, submitted January 5, 2009, have been fully considered with respect to the above ground of rejection and not found to be persuasive to remove the rejection. Applicant argues that the claims have been amended so as to no longer recite preventative methods. However, claims 35, 36, 39,

and 40 still encompass methods of slowing the natural aging of the skin. Because natural aging occurs in all skin, applying the prior art composition still inherently slows the natural aging of the skin to which it is applied.

Also, Applicant argues that Houlmont et al. does not teach a method using a reducing sugar as an active agent. However, according to the specification as originally filed, reducing sugars include glucose. (p. 4 lines 20-29) Furthermore alkyl-reducing sugars include sugars wherein the anomeric oxygen has been substituted by the alkyl group, even though they do not display a reducing functionality because the aldehyde has been blocked by the alkyl group. (p. 4 lines 5-15) Therefore the term "reducing sugar monomer whose hydroxyl function is substituted," is interpreted as encompassing glucose monomers substituted at the anomeric position, as recited by Houlmont et al. Whether or not this alkylglycoside is described as an active agent is immaterial to patentability as the recited function or intended use does not serve to differentiate the claimed invention from the prior art in the absence of any physical difference between the two compositions.

Therefore the rejection is deemed proper and made **FINAL**.

Claims 18, 19, 21, 23-33, and 35-41 are rejected under 35 U.S.C. 102(b) as being anticipated by Heiner et al. (Foreign patent publication DE19845271A1, Reference and machine translation of record in previous action)

Heiner et al. discloses a preparation to be used in a method to protect skin against harmful oxidative processes of the skin, said composition comprising

antioxidants. (p. 2 lines 55-57) The compositions are useful for treating skin again and conditions such as etythematosis, inflammation, allergic, or autoimmune conditions of the including dermatosis or photodermatosis from exposure to ultraviolet radiation. (p. 2 line 58 – p. 3 line 9) Note that exposure to ultraviolet radiation includes the effects of said radiation, for example photoaging. P. 2 line 67 - p. 3 line 18 of the original and p. 2 paragraphs 4-10 of the translation describe the usefulness of the composition in treating photodamaged or UV-exposed skin, which would inherently include treating photoaging. The compositions contain alkyl-glucosides which have an alkyl group of 4-25 carbons and an average degree of polymerization of the sugar moiety of up to 2, which one skilled in the art would at once envisage as being either one or two sugar subunits. (p. 3 line 56 – p. 4 line 21) The content of monosaccharide is typically high, on the order of 40-70% of the alkyl glucosides. (p. 12, lines 37-39) Specific alkyl groups that are preferred are myristyl, cetyl, stearyl, and eicosyl. (p. 12 lines 43-45) The alkyl glucoside is used as a surfactant preferably in an amount of 0.5-15% of the weight of the dermatological composition. (p. 12 lines 53-55) Therefore Heiner et al. anticipates the claimed invention.

Response to Argument: Applicant's arguments, submitted January 5, 2009, have been fully considered with respect to the above ground of rejection and not found to be persuasive to remove the rejection. Applicant argues that the alkylglucosides of Heiner et al. have at least two sugar units. However, as discussed above, the alkylglucosides are made up of sugars with a DP of **up to two**. That means that the DP is either 1 or 2,

with DP 1 monosaccharides being typically present in 40-70% of the saccharides. These monosaccharides are the same compounds recited in the instant claims.

Applicant further argues that Heiner et al. fails to teach any antiinflammatory or anti-aging activity for the alkylglucosides themselves, which are only disclosed as surfactants in the reference. However, for a reference to anticipate the claimed invention, all that is necessary is for the same compound to be administered to the same subject in the same manner. Applying the compositions of Heiner et al. containing the claimed alkylglycosides to inflamed or photodamaged skin already contains all of the elements required by the instant claims, whether or not the reference explicitly identifies the alkylglycosides as antiinflammatory agents. Furthermore as this process of applying the composition is the same as the process recited in the specification as producing antiinflammatory and antiaging effects, it will inherently produce these effects when practiced on the recited subjects.

Finally, Applicant argues that Heiner et al. does not teach a method using a reducing sugar as an active agent. However, according to the specification as originally filed, reducing sugars include glucose. (p. 4 lines 20-29) Furthermore alkyl-reducing sugars include sugars wherein the anormeic oxygen has been substituted by the alkyl group, even though they do not display a reducing functionality because the aldehyde has been blocked by the alkyl group. (p. 4 lines 5-15) Therefore the term "reducing sugar monomer whose hydroxyl function is substituted," is interpreted as encompassing glucose monomers substituted at the anomeric position, as recited by Heiner et al. Whether or not this alkylglycoside is described as an active agent is immaterial to

patentability as the recited function or intended use does not serve to differentiate the claimed invention from the prior art in the absence of any physical difference between the two compositions.

For these reasons the rejection is deemed proper and made **FINAL**.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 31-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Houlmont et al. (Reference of record in previous action)

Houlmont et al. discloses pentyl and cetyl rhamnosides. (p. 364 figure 1, right column first and second paragraphs) Microemulsions were prepared with 5% of either of these compounds as cosurfactants which are especially biocompatible and nontoxic. (p. 365 right column paragraphs 3-5, p. 366 tables IV and V) These compositions can be used in cosmetic products with enhanced tolerability. (p. 366, right column paragraphs 5-10) Applying these cosmetic products to the skin inherently exerts the preventative effects claimed in instant claims 18-21, 23-28, 30, 35, 36, 39, and 40 as all subjects are potentially at risk for developing an inflammatory condition and therefore included in the target population for preventing said diseases.

Houlmont et al. does not disclose a method of treating skin that is sensitive, irritated, intolerant, allergic, aged, or exhibiting other conditions as recited in claim 31.

It would have been obvious to one of ordinary skill in the art at the time of the invention to apply the cosmetic compositions of Houlmant et al to a subject whose skin is sensitive, irritated, allergic, intolerant, aged, or otherwise exhibiting a conditions that would lead to a negative reaction to other cosmetic or dermatological compositions. One of ordinary skill in the art would have been motivated to apply these compositions because Houlmant et al. discloses that they are particularly well tolerated. One of ordinary skill in the art would reasonably expected success because determining the tolerability of a treatment as it is being administered is well within the ordinary and routine level of skill in the art.

Therefore the invention taken as a whole is *prima facie* obvious.

Response to Argument: Applicant's arguments, submitted January 5, 2009, have been fully considered with respect to the above ground of rejection and not found to be persuasive to remove the rejection. Applicant argues that Houlmant et al. does not disclose methods of treating inflammatory diseases. However, claims 31-34 only claims a method of cosmetic treatment of various types of skin and/or mucous membranes that are expected to poorly tolerate cosmetic treatment, for example sensitive, irritated, allergic, or aged skin. However, the disclosure by Houlmant et al. that these compositions are especially well tolerated would motivate one of ordinary skill in the art to use them for cosmetic treatment of irritated, intolerant, or sensitive skin, as these

types of skin would be expected by one of ordinary skill in the art to be irritated by cosmetic treatment and in need of a well tolerated cosmetic treatment.

Applicant also argues that Houlmant et al. does not disclose a composition including a reducing sugar as an active agent. This argument is the same as that made against he rejection under 35 USC 102 above and is not found to be persuasive for the same reason.

For these reasons the rejection is deemed proper and made **FINAL**.

Claims 20 and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Heiner et al. (Foreign patent publication DE19845271A1, Reference and machine translation included with PTO-892)

The disclosure of Heiner et al. is discussed above. Heiner et al. does not disclose a method wherein the alkoxy radical comprises from 5 to 12 carbon atoms.

It would have been obvious to one of ordinary skill in the art at the time of the invention to make the compositions of Heiner et al. using an alkyl group of 5-12 carbons. One of ordinary skill in the art would have been motivated to use these alkyl groups because they are included within the broad range of 4-24 carbon atoms disclosed by Heiner et al. One of ordinary skill in the art would have reasonably expected success in doing so because the broader range of chain lengths are all disclosed as being effective in the invention.

Therefore the invention taken as a whole is *prima facie* obvious.

Response to Argument: Applicant's arguments, submitted January 5, 2009, have been fully considered with respect to the above ground of rejection and not found to be persuasive to remove the rejection. Applicant's arguments are the same as those made against the rejection under 35 USC 102(b) and are not found to be persuasive for the same reasons. Therefore the rejection is deemed proper and made **FINAL**.

Conclusion

No claims are allowed in this application. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ERIC S. OLSON whose telephone number is (571)272-9051. The examiner can normally be reached on Monday-Friday, 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Shaojia Anna Jiang can be reached on (571)272-0627. The fax phone

number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Eric S Olson/
Examiner, Art Unit 1623
3/10/2009

/Shaojia Anna Jiang/
Supervisory Patent Examiner, Art Unit 1623